Medical on i-law

July 2017 highlights – the best of i-law.com and picompensation.com
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Written by experts in medical law and clinical negligence, Medical on i-law.com features Medical Law Reports, our leading series of reports which focus on the most influential appellate and ground-breaking first instance decisions.

This booklet of extracts combines recent articles from Medical Law Reports, Medical Law Reports Plus and Personal Injury Compensation, to provide a round-up of our must-see content from July 2017.

Medical Law Reports Plus is a new service for 2017, and is an online series launched to complement the printed Medical Law Reports, offering early access to the Reports. Personal Injury Compensation is a sister publication to Medical Law Reports, and helps users to track and research influential judgments, as well as stay ahead of the latest debates on liability, human rights, professional regulation, clinical negligence cases and more.

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R (A and B) v Secretary of State for Health

[2017] UKSC 41, Supreme Court, Lady Hale, Lord Kerr, Lord Reed and Lord Hughes, 14 June 2017


In 2012 claimant A, then aged 15, became pregnant. She was ordinarily resident in Northern Ireland, where abortion was unlawful unless performed in good faith to preserve the life of the mother or to prevent a serious and permanent or long term effect upon her health. Such exceptions did not apply to her and therefore, under the relevant devolved legislation governing the criminal law and the provision of NHS services in Northern Ireland the abortion which she wished to have was not open to her.

Therefore she, like many other women in her position, elected to come to England to seek termination of her pregnancy. In England, such a termination was lawful but was not available as a free procedure on the NHS to women who were not ordinarily resident in England. In October 2012 A, accompanied by her mother, B, obtained an abortion at a private clinic in Manchester for which the total cost was about £900.

In these circumstances A and B brought judicial review proceedings in which they argued that it was unlawful for the Secretary of State to limit the provision of NHS abortion services in England in the way that he had. They maintained that he either had a duty or a power, which it was irrational for him not to exercise, to make such services available to A in the light of her status as a UK citizen usually resident in Northern Ireland. Furthermore, the denial of NHS services to A represented a breach of her human rights under articles 8 and 14 of the European Convention because it discriminated against her on grounds of her personal characteristic or status, namely her ordinary residence in Northern Ireland.

A and B’s claims were rejected by the High Court and the Court of Appeal.

The claimants appealed to the Supreme Court.

This is an extract of the original headnote. To access the full headnote, Report and commentary, please visit Medical Law Reports Plus, on i-law.com.
Correia v University Hospital of North Staffordshire NHS Trust

[2017] EWCA Civ 356, Court of Appeal, Black and Simon LJJ, 12 May 2017

Clinical negligence – Breach of duty and causation – Consent to three-stage operation – Whether consent vitiated by negligently performed lesser operation – Whether lack of warning of injury from negligently performed operation was actionable – Appellate court’s approach to findings of fact – Sufficiency of reasons for rejecting expert evidence.

The claimant/appellant received advice and surgical treatment at the defendant’s/respondent’s hospital in respect of a painful recurrent neuroma. She alleged negligence in both the pre-operative advice and in the performance of the operation, resulting in chronic regional pain syndrome.

The defendant’s surgeon performed the operation. In his operation record he recorded that he had identified and excised a neuroma. There was no mention of relocating a nerve. The trial judge found that the nerve had not been relocated and that the operation had therefore been performed negligently. The judge found that the neuroma had probably reformed but it had not been proven that this was the cause of her pain. The claimant had suffered from neuropathic pain before the surgery and this had continued afterwards before the new neuroma reformed. The symptoms of chronic regional pain syndrome had been caused by the operation but not by the negligence. The judge held that the claim failed because causation was not made out. The claimant appealed on two bases: lack of consent and causation.

This is an extract of the original Report headnote. To access the full headnote, Report and commentary, please visit Medical Law Reports Plus, on i-law.com.
General Medical Council v Jagjivan and Another

[2017] EWHC 1247 (Admin), Queen's Bench Division, Sharp LJ VP and Dingemans J, 26 May 2017

General Medical Council – Appeals by the GMC under Medical Act 1983, section 40A – Jurisdiction to hear appeal against finding of no impairment – Guidance on approach to appeals under section 40A.

The first respondent was a cardiology registrar. Allegations of misconduct were made against him following a consultation with a female patient. It was alleged that he had conducted the examination and assessment of the patient in an inappropriate manner, and had made various inappropriate statements to the patient in the course of the consultation about how she could increase her heart rate by stimulating herself sexually. It was alleged that his conduct was sexually motivated.

A Medical Practitioners Tribunal found most, but not all, of the facts proved and in particular did not find that the first respondent’s conduct was sexually motivated. It found that he had been guilty of misconduct, but that his fitness to practise was not currently impaired by that misconduct. It did not, therefore, go on to consider the question of sanction and did not consider it appropriate or proportionate to issue a warning.

The General Medical Council appealed under section 40A of the Medical Act 1983, contending that the Tribunal ought to have made a direction affecting the first respondent’s registration under section 35D of the Act. The first respondent contended that the GMC did not have jurisdiction to appeal against a finding of no impairment, alternatively that the Tribunal’s decision was not wrong. The second respondent, the Professional Standards Authority for Health and Social Care, was joined as a party to the appeal. It supported the GMC’s appeal, and, in the event that it were to be found that there was no jurisdiction to hear that appeal, sought permission to appeal out of time under section 29 of the National Health Service Reform and Health Care Professions Act 2002.

Comment: this was the first case to come before the courts relating to the new power of the General Medical Council under section 40A of the Medical Act 1983 to appeal against relevant decisions of Medical Practitioners Tribunals where the GMC consider that those decisions are not sufficient for the protection of the public. There is clearly a substantial overlap between this power and the power of appeal of the Professional Standards Authority under section 29 of the National Health Service Reform and Health Care Professions Act 2002.

Duty of care: disclosure of information about Huntington’s disease to patient’s daughter

It can be difficult to establish whether a duty of care exists in novel situations when there is no precedent in the legal literature on which to rely. The Court of Appeal has recently considered just such a novel case concerning both confidentiality and the nature and scope of the duty of care in negligence. The intersection of these complex areas of law has produced an interesting situation, and it was held, on the basis of the principles established by the House of Lords in Caparo Industries plc v Dickman, that it was arguably fair, just and reasonable to impose on clinicians treating a patient with Huntington’s disease a duty to disclose his diagnosis to the patient’s daughter, given that the condition could be inherited. The three judges in the Court of Appeal reached the unanimous conclusion that a High Court judge had been in error in rejecting a claim by the daughter of a seriously ill man who had been convicted of manslaughter after shooting her mother dead.

ABC v St George’s Healthcare NHS Trust [2017] EWCA Civ 336

The outline of the facts and reasoning on the preliminary issue in this litigation strongly suggests the need for the Supreme Court, in due course, to give a definitive ruling on the complex situation arising between the potentially conflicting duties of confidentiality of patients’ genetic information and the consequences of what could be regarded as the negligent failure to disclose potentially damaging information to an interested party.

This is an extract of an article first published in Personal Injury Compensation, at www.picompensation.com.
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